truck heavily laden from the Guardian Transit Company, at, to-wit: 2551 16th Street, Detroit, Michigan, to the Federal Warehouse, at, to-wit: 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

II

On to-wit: the 10th day of April, A. D. 1935, the defendant Jack Selbin, alias George Palmer, alias Jack Berg, parked a Ford V-8 Coupe and entered the premises of the Federal Warehouse at, to-wit: 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

III

One, to-wit: the 11th day of April, A. D. 1935, the defendant Harry Fleischer, alias Fleish, alias Fleischer, drove a Ford car to a point opposite the front entrance of a garage at 4029 Milford Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

IV

On or about the first day of December, A. D. 1935, the defendant John J. Gettleson, alias Warren, leased and paid the first month's rent for a portion of the Federal Warehouse at, to-wit: 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

[fol. 5] V

On or about the first day of December, A. D. 1934, defendant Harry Fleisher, alias Fleish, alias Fleischer, accompanied the defendant John J. Gettleson, alias Warren, to premises known as the Federal Warehouse at 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

## Third Count

And the Grand Jurors aforesaid do further present: That hertofore, to-wit between the 1st day of October, A. D. 1934, and the date of the filing of this Indictment, the said defendants, Harry Fleisher, alias Fleish, alias Fleischer, Sam Fleisher, alias Sam Fleish, alias Albert Ligner, alias Hollender, Joe Stein, alias Joe Brown, Jack Selbin, alias George Palmer, alias Jack Berg, Nate Kepperwas, alias Sherman, alias Cooper, John J. Gettleson, alias Warren, Sam Wisotsky, Joseph Wisotsky, Thomas Hewson, Clifford Hoffman, alias Coffman, Harry Schonosky, alias Schonowsky, Jack Mankin and Everett Demel, late of the Division and District aforesaid, and co-conspirators, did, in the Eastern District of Michigan, Southern Division, unlawfully, feloniously, knowingly and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid at, to-wit: 5620 Federal Street, in the City of Detroit, in the County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court, an offense against the laws of the United States of America, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned time and at the aforementioned place, unlawfully, knowingly, wilfully and feloniously engage in and carry on the business of distillers without having given bond as required by law and with the intent on the part of the said aforementioned defendants and co-conspirators to defraud the government of the United States of America of the tax on the spirits which would be distilled by the said aforementioned defendants and co-conspirators; contrary to the form, force, and effect of the Act of Congress in such case [fol. 6] made and provided and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

On, to-wit: the 11th day of April, A. D. 1935, the defendants Jack Mankin and Harry Schonosky, alias Schonowsky,

climbed through a small hole in the west wall of the premises known and described as the Federal Warehouse, at, to-wit: 5620 Federal Street, in the City of Detroit, in the County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

II

On, to-wit: the 10th day of April, A. D. 1935, the defendant Joseph Stein, alias Joe Brown, drove an Indiana truck from the American Can Company, in the City of Detroit, to a garage at, to-wit: 4029 Milford Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Fourth Count

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit: between the 1st day of October, A. D. 1934, and the date of the filing of this indictment, the said defendants, Harry Fleisher, alias Fleish, alias Fleisher, Sam Fleisher, alias Sam Fleish, alias Albert Ligner, alias Hollender, Joe Stein, alias Joe Brown, Jack Selbin, alias George Palmer, alias Jack Berg, Nate Kepperwas, alias Sherman, alias Cooper, John J. Gettleson, alias Warren, Sam Wisotsky, Joseph Wisotsky, Thomas Hewson, Clifford Hoffman, alias Coffman, Harry Schonosky, alias Schonowsky, Jack Mankin and Everett Demel, late of the Division and District aforesaid, and co-conspirators did, in the Eastern District of Michigan, Southern Division, unlawfully, feloniously, knowingly and wilfully con- [fol. 7] spire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid, at, to-wit: 5620 Federal Street and 4029 Milford Street, in the City of Detroit, in the County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court, an offense against the laws of the United States of America, to-wit: Section 201, Title II of the Liquor Taxing Act of 1934, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned times and at the aforementioned places, unlawfully knowingly, wilfully and feloniously possess a large quan-

tity of distilled spirits, to-wit: 775 Gallons of distilled spirits at 5620 Federal Street, Detroit, Michigan, and 1,500 gallons of distilled spirits at 4029 Milford Street, Detroit, Michigan, the immediate containers thereof not having affixed thereto a stamp or stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Tax imposed on said spirits; contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

On or about the 8th day of April, A. D. 1935, the defendant Sam Fleisher, alias Fleish, alias Albert Ligner, alias Hollender, transported a large quantity of sugar from a point in Cleveland, Ohio, to a point in the City of Detroit, Michigan, to-wit: The Federal Warehouse, 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

II

During, to-wit: the late fall of 1934 and/or the first part of 1935, the defendant Sam Wisotsky constructed a cement block partition in the premises at, to-wit: 5620 Federal Street, in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this Honorable Court.

[fol. 8] Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Gregory H. Frederick, United States Attorney. Ken C. Corbitt, Assistant United States Attorney, Eastern District of Michigan.

CJP.

A true bill. Frank Lester, Foreman.

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S PLEA—March 31, 1936

The defendants Harry Fleisher, alias Fleish, alias Fleischer; Sam Fleisher, alias Sam Fleish, alias Albert Lig-
[fol. 9] ner, alias Hollender; Joe Stein, alias Joe Brown; Jack Selbin, alias George Palmer, alias Jack Berg; John J. Gettleson, alias Warren; Thomas Hewson; Clifford Hoffman, alias Coffman; Jack Mantin and Everett Demel being present in court and being arraigned on the indictment heretofore filed against them, each waive the reading thereof and stands mute, thereupon a plea of not guilty is entered herein as to each of said defendants under direction of the Court. Thereupon the Court do now here order the appearance bonds of said defendants and the appearance bond of defendant Harry Schonosky alias Schonowsky continued in full force. It is further Ordered by the Court that defendants Nate Kepperwas, alias Sherman, alias Cooper; Sam Wisotsky and Joseph Wisotsky be and they are hereby remanded to the custody of the United States Marshal to await Trial.

IN UNITED STATES DISTRICT COURT

[Title omitted]

VERDICT—April 9, 1936

[fol. 10] The jurors heretofore empaneled and sworn in this case come into Court again and sit together and hear the arguments of attorneys for respective parties and the charge of the Court and retire under the charge of officers duly sworn for that purpose to consider of their verdict to be rendered, and after being absent for a time return into Court and say upon their oaths that said defendants, Harry Fleisher, alias Fleish, alias Fleischer, Sam Fleisher, alias Sam Fleish, alias Albert Ligner, alias Hollender, Joe Stein, alias Joe Brown, Jack Selbin, alias George Palmer, alias Jack Berg, are guilty of the charges in said indictment contained.

Thereupon the Court do now here order sentence of said defendants deferred until April 15th, 1936, and appearance bonds of said defendants heretofore filed herein continued in full force.

IN UNITED STATES DISTRICT COURT

[Title omitted]

SENTENCE OF THE COURT IMPOSED ON HARRY FLEISHER—April 15, 1936

[fol. 11] The defendant, Harry Fleisher, alias Fleish, alias Fleischer, being present in court, and having heretofore on April 9th, 1936, been found guilty of the charges in said indictment contained, and now being placed at the Bar of the Court for sentence, and duly inquired of by the Court what he had to say why sentence should not be imposed upon him, and the Court having fully heard and considered all that said defendant had to say in that behalf, thereupon the Court do now here sentence the said defendant Harry Fleisher, alias Fleish, alias Fleischer, as follows:

On Count One, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars, and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and including this day:

On Count Two, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count One:

On Count Three, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated [fol. 12] by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count Two:

On Count Four, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count Three:

Said fines to be accumulative.

Said defendant to stand committed until the terms of this sentence are complied with.

It is further ordered by the Court that the appearance bond of said defendant be, and it hereby is cancelled and discharged.

---

IN UNITED STATES DISTRICT COURT

[Title omitted]

SENTENCE OF THE COURT IMPOSED ON SAM FLEISHER—April 15, 1936

[fol. 13] The defendant, Sam Fleisher, alias Sam Fleish, alias Albert Ligner, alias Hollender, being present in court, and having heretofore on April 9th, 1936, been found guilty of the charges in said indictment contained, and now being placed at the Bar of the Court for sentence, and duly inquired of by the Court what he had to say why sentence should not be imposed upon him and the Court having fully heard and considered all that said defendant had to say in that behalf, thereupon the Court do now here sentence the said defendant Sam Fleisher, alias Sam Fleish, alias Albert Ligner, alias Hollender, as follows:

On Count One, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and including this day:

On Count Two, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count One:

On Count Three, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count Two:

On Count Four, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an institution to be designated by the Attorney General of the United States for the full

period of two (2) years from and after expiration of term of imprisonment imposed on Count Three:

[fol. 14] Said fines to be accumulative.

Said defendant to stand committed until the terms of this sentence are complied with.

It is further ordered by the Court that the appearance bond of said defendant be; and it hereby is cancelled and discharged.

---

IN UNITED STATES DISTRICT COURT

[Title omitted]

SENTENCE OF THE COURT IMPOSED ON DEFENDANT JOSEPH STEIN—April 15, 1936

The defendant, Joe Stein, alias Joe Brown, being present in court, and having heretofore on April 9th, 1936, been [fol. 15] found guilty of the charges in said indictment contained, and now being placed at the Bar of the Court for sentence, and duly inquired of by the Court what he had to say why sentence should not be imposed upon him, and the Court having fully heard and considered all that said defendant had to say in that behalf, thereupon the Court do now here sentence the said defendant Joe Stein, alias Joe Brown, as follows:

On Count One, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and including this day:

On Count Two, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count One:

On Count Three, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be imprisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count Two:

On Count Four, to pay to the United States of America a fine of Five Thousand ($5,000) Dollars; and to be im-

prisoned and kept at and in an Institution to be designated by the Attorney General of the United States for the full period of two (2) years from and after expiration of term of imprisonment imposed on Count Three:

Said fines to be accumulative.

Said defendant to stand committed until the terms of this sentence are complied with.

It is further ordered by the Court that the appearance bond of said defendant be, and it hereby is cancelled and discharged.

---

[fol. 16] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL OF HARRY FLEISHER

Name and address of Appellant: Harry Fleisher, 593 Hague, Detroit, Michigan.

Names and addresses of Appellant's Attorneys: Alfred A. May, 1459 National Bank Bldg., Detroit, Mich. George S. Fitzgerald, 3123 Barlum Tower, Detroit, Mich. Arthur H. Ratner, 1109 Guaranty Bldg., Detroit, Mich. Donald B. Frederick, 1706 Dime Bank Bldg., Detroit, Mich.

Offense: Conspiracy to illegally possess a still and to make mash and distill spirits without paying the revenue required by law, and to fail to give bond as required by the Revenue Act.

Date of Judgment: April 15, 1936.

Brief Description of Sentence: Harry Fleisher: Eight years at a Penitentiary to be designated by the Attorney General and $20,000.00 fine.

Name of Prison where now confined: The defendant is at present confined in the Federal Detention Farm, Milan, Michigan, awaiting transportation to a Penitentiary to be designated by the Attorney General, if bail will not be granted.

I, the above named defendant and appellant, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the judgment and sentence above mentioned, on the grounds set forth below.

Harry Fleisher, Appellant.

Dated, Detroit, Michigan, April 16, 1936.

[fol. 17] IN UNITED STATES DISTRICT COURT

GROUNDS OF APPEAL—Filed April 18, 1936

I

The court erred in refusing to grant a mistrial when the Assistant United States District Attorney asked Clifford Coffman and Thomas Hewson, two Government witnesses, who were also defendants, if the defense had subpœnaed the books and records of the Federal Warehouse Company.

II

The court erred in examining the jury upon the voir dire as to the defendants, Clifford Coffman and Thomas Hewson, where as a matter of fact the defendants, Clifford Coffman and Thomas Hewson were not actually tried, nor was a severance granted, the effect being to prejudice the jury.

III

The court erred in allowing the Government to withdraw from trial the defendants, Clifford Coffman and Thomas Hewson, after the jury had been sworn.

IV

The court erred in allowing the Government to subpœna Clifford Coffman and Thomas Hewson without first proving the corpus delicti of the alleged crime.

V

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without an instruction as to the difference between subpœnaing a witness and summoning a defendant for trial.

VI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without a proper severance being requested by the Government and a proper order being entered by this court upon such request.

VII

The court erred in its charge to the jury in that it failed to properly define charges set forth in the indictment.

VIII

The court erred in refusing to consolidate the four counts in the indictment to one general count, the alleged viola-
[fol. 18] tion of the four separate statutes involved, constituting but one crime.

IX

The court erred in its additional instructions to the jury by failing to apprise the defense of the instructions requested by the jury and in not asking counsel if there were any exceptions thereto.

X

The court erred in giving additional instructions to the jury by drawing an analogy between a robbery of a post office in the City of Detroit and the conspiracy to violate the law herein in question.

XI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury before they had entered a plea of guilty to the conspiracy in this cause, or had been convicted of conspiracy in this cause.

XII

The court erred in allowing the Government to subpœna Clifford Coffman and Thomas Hewson, and to demand testimony from Clifford Coffman and Thomas Hewson before the Government had established the corpus delicti of this cause.

XIII

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without the specific instruction that the words or actions of one co-conspirator made or spoken by such co-conspirator in furtherance of the conspiracy is the act of all.

XIV

The court erred in allowing testimony of Clifford Coffman and Thomas Hewson to go to the jury over the objections of counsel.

XV

The court erred in allowing statements of certain alleged co-conspirators to go to the jury without proper instruction.

[fol. 19]

XVI

The court erred in refusing to rule upon request of defense counsel to have the Government produce and turn over to the defense counsel for the purpose of cross-examination, the statements made to the Government officers by certain Government witnesses, who were also defendants in this cause.

XVII

The court erred in allowing the admission of exhibits taken from the so-called Federal Warehouse, which the defense claims were taken illegally, and which evidence the defendant had moved to be suppressed.

XVIII

The Court erred in allowing the admission in evidence of certain exhibits which the defense claims were taken during the process of an illegal search at 4029 Milford, in violation of the defendant's constitutional rights, which evidence the defendant had moved to suppress.

XIX

The court erred in its failure to suppress the evidence seized from the Federal Warehouse and from 4029 Milford Street in the City of Detroit, in violation of the constitutional rights of the defendant.

XX

The court erred in not directing a verdict of not guilty to the first count of the indictment, the same not setting forth a violation of a statute or law of the Congress of the United States of America.

XXI

The court erred in sentencing this defendant in that the sentence was excessive for the reason that the defendant was convicted of but one crime and not four crimes.

[fol. 20] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL OF SAM FLEISHER

Name and Address of Appellant: Sam Fleisher, 8769 Russell, Detroit, Michigan.

Names and addresses of Appellant's Attorney: Alfred A. May, 1459 National Bank Bldg., Detroit, Mich. George S. Fitzgerald, 3123 Barlum Tower, Detroit, Mich. Arthur H. Ratner, 1109 Guaranty Bldg., Detroit, Mich. Donald B. Frederick, 1706 Dime Bank Bldg., Detroit, Mich.

Offense: Conspiracy to illegally possess a still and to make mash and distill spirits without paying the revenue required by law and to fail to give bond as required by the Revenue Act.

Date of Judgment: April 15th, 1936.

Brief description of sentence: Eight years at a Penitentiary to be designated by the Attorney General and $20,000.00 fine.

Name of Prison where now confined: The defendant is at present confined in the Federal Detention Farm, Milan, Michigan, awaiting transportation to a Penitentiary to be designated by the Attorney General, if bail will not be granted.

I, the above named defendant and appellant hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the judgment and sentence above mentioned, on the grounds set forth below.

Sam Fleisher, Appellant.

Dated, Detroit, Michigan, April 16, 1936.

---

[fol. 21] IN UNITED STATES DISTRICT COURT

GROUNDS OF APPEAL—Filed April 18, 1936

I

The court erred in refusing to grant a mistrial when the Assistant United States District Attorney asked Clifford Coffman and Thomas Hewson, two Government witnesses who were also defendants, if the defendant had subpœnaed the books and records of the Federal Warehouse Company.

II

The court erred in examining the jury upon the voir dire as to the defendants, Clifford Coffman and Thomas Hewson, where as a matter of fact the defendants, Clifford Coffman and Thomas Hewson were not actually tried, nor was a severance granted, the effect being to prejudice the jury.

III

The court erred in allowing the Government to withdraw from trial the defendants, Clifford Coffman and Thomas Hewson, after the jury had been sworn.

IV

The court erred in allowing the Government to subpœna Clifford Coffman and Thomas Hewson without first proving the corpus delicti of the alleged crime.

V

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without an instruction as to the difference between subpœnaing a witness and summoning a defendant for trial.

VI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without a proper severance being requested by the Government and a proper order being entered by this court upon such request.

VII

The court erred in its charge to the jury in that it failed to properly define charges set forth in the indictment.

VIII

The court erred in refusing to consolidate the four counts in the indictment to one general count, the alleged violation [fol. 22] of the four separate statutes involved, constituting but one crime.

IX

The court erred in its additional instructions to the jury by failing to apprise the defense of the instructions re-

quested by the jury and in not asking counsel if there were any exceptions thereto.

X

The court erred in giving additional instructions to the jury by drawing an analogy between a robbery of a post office in the City of Detroit and the conspiracy to violate the law herein in question.

XI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury before they had entered a plea of guilty to the conspiracy in this cause or had been convicted of conspiracy in this cause.

XII

The court erred in allowing the Government to subpoena Clifford Coffman and Thomas Hewson, and to demand testimony from Clifford Coffman and Thomas Hewson before the Government had established the corpus delicti of this cause.

XIII

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without the specific instruction that the words or actions of one co-conspirator made or spoken by such co-conspirator in furtherance of the conspiracy is the act of all.

XIV

The court erred in allowing testimony of Clifford Coffman and Thomas Hewson to go to the jury over the objections of counsel.

XV

The court erred in allowing statements of certain alleged co-conspirators to go to the jury without proper instruction.

[fol. 23]

XVI

The court erred in refusing to rule upon request of defense counsel to have the Government produce and turn over to the defense counsel for the purpose of cross-examination the statements made to the Government officers by certain

Government witnesses, who were also defendants in this cause.

XVII

The court erred in allowing the admission of exhibits taken from the so-called Federal Warehouse, which the defense claims were taken illegally, and which evidence the defendant had moved to be suppressed.

XVIII

The court erred in allowing the admission in evidence of certain exhibits which the defense claims were taken during the process of an illegal search at 4029 Milford, in violation of the defendant's constitutional rights, which evidence the defendant had moved to suppress.

XIX

The court erred in its failure to suppress the evidence seized from the Federal Warehouse and from 4029 Milford Street in the City of Detroit, in violation of the constitutional rights of the defendant.

XX

The court erred in not directing a verdict of not guilty to the first count of the indictment, the same not setting forth a violation of a statute or law of the Congress of the United States of America.

XXI

The court erred in sentencing this defendant in that the sentence was excessive for the reason that the defendant was convicted of but one crime and not four crimes.

---

[fol. 24] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL OF JOSEPH STEIN

Name and address of Appellant: Joseph Stein, 296 E. Euclid, Detroit, Michigan.

Names and addresses of Appellant's Attorneys: Alfred A. May, 1459 National Bank Bldg., Detroit, Mich. George S. Fitzgerald, 3123 Barlum Tower, Detroit, Mich. Arthur H. Ratner, 1109 Guaranty Bldg., Detroit, Mich. Donald B. Frederick, 1706 Dime Bank Bldg., Detroit, Mich.

Offense: Conspiracy to illegally possess a still and to make mash and distill spirits without paying the revenue required by law, and to fail to give bond as required by the Revenue Act.

Date of Judgment: April 15, 1936.

Brief description of sentence: Joseph Stein: Eight years at a Penitentiary to be designated by the Attorney General and $20,000.00 fine.

Name of Prison where now confined: The defendant is at present confined in the Federal Detention Farm, Milan, Michigan, awaiting transportation to a Penitentiary to be designated by the Attorney General, if bail will not be granted.

I, the above named defendant and appellant, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the judgment and sentence above mentioned, on the grounds set forth below.

Joseph Stein, Appellant.

Dated: Detroit, Michigan, April 16, 1936.

---

[fol. 25] IN UNITED STATES DISTRICT COURT

GROUNDS OF APPEAL—Filed April 18, 1936

I

The court erred in refusing to grant a mistrial when the Assistant United States District Attorney asked Clifford Coffman and Thomas Hewson, two Government witnesses, who were also defendants, if the defense had subpoenaed the books and records of the Federal Warehouse Company.

II

The court erred in examining the jury upon the voir dire as to the defendants, Clifford Coffman and Thomas Hewson, where as a matter of fact the defendants, Clifford Coffman and Thomas Hewson were not actually tried, nor was a severance granted, the effect being to prejudice the jury.

III

The court erred in allowing the Government to withdraw from trial the defendants, Clifford Coffman and Thomas Hewson, after the jury had been sworn.

IV

The court erred in allowing the Government to subpoena Clifford Coffman and Thomas Hewson without first proving the corpus delicti of the alleged crime.

V

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without an instruction as to the difference between subpoenaing a witness and summoning a defendant for trial.

VI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without a proper severance being requested by the Government and a proper order being entered by this court upon such request.

VII

The court erred in its charge to the jury in that it failed to properly define charges set forth in the indictment.

VIII

The court erred in refusing to consolidate the four counts in the indictment to one general count, the alleged violation [fol. 26] of the four separate statutes involved, constituting but one crime.

IX

The court erred in its additional instructions to the jury by failing to apprise the defense of the instructions requested by the jury and in not asking counsel if there were any exceptions thereto.

X

The court erred in giving additional instructions to the jury by drawing an analogy between a robbery of a post office in the City of Detroit and the conspiracy to violate the law herein in question.

XI

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury before

they had entered a plea of guilty to the conspiracy in this cause, or had been convicted of conspiracy in this cause.

XII

The court erred in allowing the Government to subpoena Clifford Coffman and Thomas Hewson, and to demand testimony from Clifford Coffman and Thomas Hewson before the Government had established the corpus delicti of this cause.

XIII

The court erred in allowing the testimony of Clifford Coffman and Thomas Hewson to go to the jury without the specific instruction that the words or actions of one co-conspirator made or spoken by such co-conspirator in furtherance of the conspiracy is the act of all.

XIV

The court erred in allowing testimony of Clifford Coffman and Thomas Hewson to go to the jury over the objections of counsel.

XV

The court erred in allowing statements of certain alleged co-conspirators to go to the jury without proper instruction.

[fol. 27]

XVI

The court erred in refusing to rule upon request of defense counsel to have the Government produce and turn over to the defense counsel for the purpose of cross-examination the statements made to the Government officers by certain Government witnesses, who were also defendants in this cause.

XVII

The court erred in allowing the admission of exhibits taken from the so-called Federal Warehouse, which the defense claims were taken illegally, and which evidence the defendant had moved to be suppressed.

XVIII

The court erred in allowing the admission in evidence of certain exhibits which the defense claims were taken during

the process of an illegal search at 4029 Milford, in violation of the defendant's constitutional rights, which evidence the defendant had moved to suppress.

XIX

The court erred in its failure to suppress the evidence seized from the Federal Warehouse and from 4029 Milford Street, in the City of Detroit, in violation of the constitutional rights of the defendant.

XX

The court erred in not directing a verdict of not guilty to the first count of the indictment, the same not setting forth a violation of a statute or law of the Congress of the United States of America.

XXI

The court erred in sentencing this defendant in that the sentence was excessive for the reason that the defendant was convicted of but one crime and not four crimes.

---

[fol. 28] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS AND FILE ASSIGNMENT OF ERRORS TO AND INCLUDING AUGUST 17, 1936, IN APPEAL OF HARRY FLEISHER—Filed May 7, 1936.

On reading and filing the stipulation and stenographers certificate,

It Is Hereby Ordered that the time for settling the Bill of Exceptions in this cause be and the same is hereby extended to and including August 17, A. D. 1936, and that the time for filing the Assignment of Errors be extended to the same date.

Arthur F. Lederle, United States District Judge.

---

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS AND FILE ASSIGNMENT OF ERRORS TO AND INCLUDING AUGUST 17, 1936, IN APPEAL OF SAM FLEISHER—Filed May 7, 1936

On reading and filing the stipulation and stenographers certificate,

It Is Hereby Ordered that the time for settling the Bill of Exceptions in this cause be and the same is hereby extended to and including August 17, A. D. 1936, and that the time for filing the Assignment of Errors be extended to the same date.

Arthur F. Lederle, United States District Judge.

---

[fol. 29] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS AND FILE ASSIGNMENT OF ERRORS TO AND INCLUDING AUGUST 17, 1936, IN APPEAL OF JOSEPH STEIN—Filed May 7, 1936

On reading and filing the stipulation and stenographers certificate,

It Is Hereby Ordered that the time for settling the Bill of Exceptions in this cause be and the same is hereby extended to and including August 17, A. D. 1936, and that the time for filing the Assignment of Errors be extended to the same date.

Arthur F. Lederle, United States District Judge.

---

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS TO AND INCLUDING SEPTEMBER 15, 1936—Filed July 16, 1936

On reading and filing the stipulation for an extension of time in which to settle the bill of exceptions, and on good cause being shown therefore, and it appearing to this Court that the time for settling the bill of exceptions has not expired,

It Is Hereby Ordered that the time for settling the bill of exceptions in these appeals be and the same is hereby extended to and including the 15th day of September, A. D. 1936.

Arthur F. Lederle, United States District Judge.

[fol. 30] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS TO AND INCLUDING OCTOBER 12, 1936—Filed September 10, 1936

On reading and filing the stipulation for an extension of time in which to settle the bill of exceptions, and on good cause being shown therefore, and it appearing to this Court that the time for settling the bill of exceptions has not expired,

It Is Hereby Ordered that the time for settling the bill of exceptions in these appeals be and the same is hereby extended to and including the 12th day of October, A. D. 1936.

Arthur F. Lederle, United States District Judge.

---

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS TO AND INCLUDING JANUARY 2, 1937—Filed October 6, 1936

Upon reading and filing the stipulation, which contains the consent of the United States Attorney for the Eastern District of Michigan; and upon reading and filing the affidavit of Alfred A. May,

It Is Ordered that the time for settling the Bill of Exceptions in this cause, and the time for filing the Assignment of Errors, be and the same is hereby extended to and including January 2, A. D. 1937.

Arthur F. Lederle, District Judge.

---

[fol. 31] IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed December 4, 1936

In the early part of the year 1936 the appellants herein and others were indicted in a conspiracy indictment, the first count charging that they did conspire to cause to be set up stills and distiller's apparatus without having the same registered with the Collector of Internal Revenue,

as required by law; and in furtherance of the above count sets forth the following overt acts: That Jack Selbin superintended the unloading and loading of a large quantity of sugar at the Guardian Transit Company in the City of Detroit on to-wit: the 10th day of April, 1935. Another overt act charges the defendant, Joseph Stein with unloading a large quantity of sugar at the Guardian Transit Company on to-wit the 11th day of April, 1935.

The indictment sets forth the second count, charging the appellants and other persons with conspiring to unlawfully, knowingly, willfully and feloniously making and fermenting and causing to be made and fermented large quantities of mash, wort and/or wash. As to this count the indictment sets forth various overt acts, to-wit: That the defendant Joseph Stein did on the 10th day of April, 1936, drive an Indiana truck, heavily laden, from the Guardian Transit Company in the City of Detroit, to the Federal Warehouse in the City of Detroit. Another overt act is set forth as follows: that the defendant, Jack Selbin, did on the 10th day of April, 1935, back a Ford V-8 Coupe and enter the premises of the Federal Warehouse in the City of Detroit. A further overt act sets forth that the defendant, Harry Fleisher, did on the 11th day of April, 1935, drive a Ford car to a point opposite the front entrance of a garage at 4029 Milford Street, Detroit, Michigan. A further overt act under this count sets forth that the defendant, John J. Gettleson did on or about the 1st day of December, 1935, lease and pay the first months rent for a portion of the Federal Warehouse located in the City of Detroit, Michigan. Another overt act under this count sets forth that the defendant, Harry Fleisher, did on or about the 1st of December, 1935, accompany the defendant, John J. Gettleson, to the Federal Warehouse in the City of Detroit, Michigan.

The indictment sets forth the third count, charging the appellants and others with conspiring to carry on the business of distillers without having given bond as required by the law, and with the intent on the part of the defendants to co-conspire to defraud the government of the United [fol. 32] States of America of the tax on the spirits which would be distilled by the said defendants and co-conspirators. Under the overt acts in furtherance of the above count in this conspiracy indictment, is set forth as follows: That the defendants, Jack Mankin and Harry Schonosky, on the

11th day of April, 1935, climbed through a small hole in the west wall of the premises known and described as the Federal Warehouse, located in the City of Detroit, Michigan; a further overt act under this count sets forth that on the 10th day of April, 1935 the defendant, Joseph Stein, drove an Indiana truck from the American Can Company, in the City of Detroit, to the garage at 4029 Milford Street, in the City of Detroit.

The Fourth Count in the indictment sets forth that the appellants, and others, unlawfully conspired to possess a large quantity of distilled spirits the immediate containers not having affixed thereto a stamp or stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Tax imposed on said spirits, and that the said spirits were at 5620 Federal Street in the premises known as the Federal Warehouse, and also other gallons of the distilled spirits being found at 4029 Milford Street, Detroit, Michigan; all of which spirits not having on their immediate containers stamps as required by law. The overt acts in furtherance of the above count are set forth as follows: On the 8th day of April, 1935, the defendant Sam Fleisher, transported large quantities of sugar from a point in Cleveland, Ohio to the Federal Warehouse in the City of Detroit. Another overt act sets forth that during the late fall of 1934, or the first part of 1935, the defendant, Sam Wisotsky, constructed a cement block partition in the premises known as the Federal Warehouse.

On the 31st day of March, 1936, the defendants were tried before the Honorable Arthur F. Lederle, United States District Judge, and a jury. That during the progress of the trial the defendants moved to consolidate the four counts in the indictment into one count, claiming that the four counts constituted but one crime and one conspiracy. The trial court denied this motion to which an exception was taken.

That during the progress of the trial, testimony was offered to the following effect: That sometime during the month of October, 1934, John Gettleson went to the Federal Warehouse, located at 5620 Federal Street, Detroit, Michigan, and spoke to Mr. Coffman and Mr. Hewson, other defendants in this cause, stating that he, Gettleson, was [fol. 33] Mr. Warren, and that he was a real estate man doing business in the City of Detroit, stating that he had

some clients who were in the chemical manufacturing business under the name of Osborne Products Company, and that they desired to acquire a site for a place to manufacture chemicals. Mr. Gettleson, under the name of Warren, negotiated with Mr. Hewson and Mr. Warren, who were running this warehouse for a corporation, for the remainder of October; and that the negotiations for the rental of this place for the Osborne Company continued until the month of November, 1934.

While these negotiations were being carried on to the point where an agreement as to amount of space that the Osborne Company would take and the amount of money they would pay for it, Mr. Gettleson, under the name of Warren, brought to the Federal Warehouse two men whom he did not introduce. There was some testimony to the effect that these men were Jack Selbin and Harry Fleisher. There was some testimony that during the time that Mr. Gettleson was on these premises with the aforementioned parties, that they looked over the space about which Mr. Gettleson has previously spoken with Mr. Hewson. There were measurements made of the building to make sure that it was the right amount of space that they needed. While this was taking place there was some evidence showing that Harry Fleisher at times had a handkerchief near his face.

There was some testimony to show that Mr. Gettleson represented to Mr. Coffman and Mr. Hewson that the Osborne Products Company was going to operate a small manufacturing plant and it was necessary for them to make a small hole in the floor of this building. There was some evidence that there were arrangements to partition off a portion of the walls. There was also some evidence to show that after this agreement had been finally consummated that Harry Fleisher and Jack Selbin came to these premises on three or four occasions, and that thereafter Mr. Wisotsky and his brother, and a party known as Schonowsky, and a man by the name of Stein came to the premises, and a partition separating that portion of the warehouse which had been rented to the Osborne Products Company was built.

There was some evidence to show that the operators of the warehouse discussed with Mr. Selbin the matter of rent due, and that Mr. Selbin told Mr. Coffman and Mr. Hewson that he and his associates had given the money,

which was to be paid to the said warehouse, to the man known to them as Warren, advising the said parties that the [fol. 34] man's name wasn't Warren but John Gettleson. After a telephone call by Selbin, the defendant, Gettleson, brought the money over to Coffman and Hewson.

There was some testimony tending to show that the Guardian Transit Company transported a considerable amount of sugar, and that some of this sugar was delivered to the truck of the Guardian Transit Company by Sam Fleisher.

There was some testimony to show that the cartage of the sugar was paid in cash by Jack Selbin or Joseph Stein.

There was some testimony to show that these trucks of the Guardian Transit Company were followed by Government officers from Cleveland, Ohio, to the address of the Guardian Transit Company, and that these officers observed this sugar being loaded into automobiles belonging to some of the defendants, and that after the sugar was loaded into the cars it was transported to the Federal Warehouse in the City of Detroit, and there unloaded from those cars into the Federal Warehouse building.

There was some testimony to show that these men, or some of them, operated a garage at 4029 Milford Street, in the City of Detroit, and that this garage was a place where the trucks were stored that contained the sugar that had been delivered to the warehouse, and that the garage was used to store the alcohol that was manufactured by this still in the Federal Warehouse.

There was evidence to show that during the month of April, 1935, that the Federal Warehouse was visited by Federal officers with a search warrant, at which time they discovered in this portion of the premises which had been rented to some of the defendants, eight hundred gallons of fuel oil, a sixty-two hundred gallon still cooker, a five hundred gallon receiving vat, and two complete stills, together with other equipment, and that there was a considerable amount of alcohol found on the premises of the Federal Warehouse and the garage on Milford Street.

That in addition to the foregoing, men were found in the act of operating the still. That while this seizure was taking place there was at that time in the actual process of being transferred to the defendants, several loads of sugar belonging to the Guardian Transit Company.

There was also some evidence to the effect that while these trucks were on their way from Cleveland to Detroit, [fol. 35] they were overtaken by the defendant, Harry Fleisher, somewhere near the Michigan line, and that Mr. Fleisher advised these truck owners that he did not want to lose that sugar, that he wanted it to be taken to the garage of the Guardian Transit Company on Milford Street, and if anybody tried to pick them up to keep their mouths shut, and he gave them money to eat with and lay over a short time while he attempted to have his own trucks come out and release the sugar.

There was some evidence tending to show that there was a quantity of fuel oil which was brought to the Federal Warehouse.

That on the 8th day of April, A. D. 1936, the jury found the defendants, Harry Fleisher, Sam Fleisher, Joseph Stein and Jack Selbin guilty as charged, and John J. Gettleson guilty on Count One, but not guilty on the rest of the counts; and found the other defendants, not guilty.

That on the 15th day of April, A. D. 1936, the Honorable Arthur F. Lederle, United States District Judge for the Eastern District of Michigan, Southern division, sentenced the defendants, Harry Fleisher, Sam Fleisher and Joseph Stein, appellants in this cause, to serve two years on each of the four counts as charged in the indictment, to be served in a Federal Penitentiary to be designated by the Attorney General of the United States; and in addition thereto, fined each of the defendants Five Thousand ($5,000.00) Dollars on each count of the indictment.

That the appellants, in their assignments of error, have set forth that the court erred in sentencing and fining each of the defendants on four separate counts, whereas the appellants contend that the four counts of the indictment constitute but one conspiracy and but one crime, and that the four sentences constitute quadruple and excessive punishment in violation of the Constitution of the United States; and that the court erred in not consolidating the four counts of the indictment, for the same reasons, overruling defendants' motion to consolidate, to which exception was taken.

It Is Hereby Stipulated and Agreed by and between the United States of America and the appellants, Harry Fleisher, Sam Fleisher and Joseph Stein, by their respective counsel, that the foregoing constitutes the agreed statement

of facts upon which the brief in this cause shall be substantially predicated.

[fol. 36] Dated this 2nd day of December, A. D. 1936.

John C. Lehr, United States Attorney, by William G. Comb, District United States Attorney. Alfred A. May, Attorney for appellants.

---

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed December 4, 1936

Come now the said Harry Fleisher, Sam Fleisher and Joseph Stein, by Alfred A. May and George Fitzgerald, their attorneys, defendants and appellants in the above entitled cause and file the following assignments of error upon which they will rely in the prosecution of the appeal taken in said cause from the judgments and sentences against them under the indictment herein which judgments and sentences were entered by this court on the 15th day of April A. D. 1936, and set forth the following assignments of error.

1. That the Court erred in refusing to consolidate the four counts in the indictment into one count, the alleged violations under the four counts constituting but one crime.

2. The Court erred in refusing to hold that there was but one offense committed and charged in the Indictment instead of four separate offenses.

3. That the Court erred in sentencing the defendants under each count in the indictment, instead of consolidating the counts and sentencing the defendants for but one crime.

4. That the Court imposed quadruple punishment upon the defendants in sentencing them to two years on each of the four counts of the indictment.

5. That the Court erred in failing to hold that there was but one conspiracy and not four separate conspiracies.

[fol. 37] 6. That the Court erred in sentencing the defendants four times for the one crime charged, that the same is in contravention of the Constitution of the United States and specifically of the cruel and unusual punishment clause

thereof and of the first—fourteenth Amendments thereof inclusive.

Whereof the said Harry Fleisher, Sam Fleisher and Joseph Stein, by their respective counsel, by reason of the errors aforesaid, pray that the said judgments and sentences against them, under the indictment herein, may be reversed and held for naught.

Alfred A. May, George Fitzgerald, Attorneys for Appellants.

---

IN UNITED STATES DISTRICT COURT

ORDER TO FILE ASSIGNMENTS OF ERROR AND FOR THE CLERK TO FORWARD RECORD OF PROCEEDINGS—Filed December 4, 1936

It appearing to this Court that the appeals taken in this cause are to be prosecuted upon the clerk's record of proceedings, and without a Bill of Exceptions,

It Is Hereby Ordered that the appellants file with the clerk of the United States District Court for the Eastern District of Michigan, Southern Division, within ten days of the date of this order, an assignment of errors, or assignments of error, and that the clerk shall promptly forward the same together with the record of the proceedings in this cause, including therein the indictment; defendants' plea and bond; verdict of the jury; sentence and judgment of the Court; notices of appeal and grounds of appeal; assignments of error; extensions of time in which to settle and file the Bill of Exceptions; Stipulation designating the contents of the record of appeal; the agreed statement of facts; and this order directing the clerk to forward the record; and [fol. 38] together with the same the clerk shall forward his certificate to the United States Circuit Court of Appeals, Sixth Judicial Circuit.

Arthur F. Lederle, United States District Judge.

---

IN UNITED STATES DISTRICT COURT

STIPULATION DESIGNATING CONTENTS OF RECORD ON APPEAL—Filed December 4, 1936

It is hereby stipulated and agreed by and between the appellants and the appellee by their respective counsel that

the appeals in this cause are to be prosecuted upon the clerk's record of the proceedings without a bill of exceptions and on the agreed statement of facts, and on the assignment of errors and that the record of proceedings be forwarded to the Circuit Court of Appeals for the Sixth Judicial Circuit; that the same shall contain the following papers and documents constituting the record of appeals:

1. Indictment.
2. Defendant's plea and bond.
3. Verdict of the Jury.
4. Sentence and judgment of the court.
5. Notices of appeal and grounds of appeal.
6. Assignment of errors.
7. Extension of time to settle and file the bill of exceptions, etc.
8. Stipulation designating the contents of the record of appeal.
9. Agreed statement of facts.
10. Order directing clerk of District Court to forward record.

John C. Lehr, United States District Attorney, by Fred R. Walker, Assistant United States Attorney. Alfred A. May, Attorney for appellants.

---

[fols. 39-40] Clerk's certificate to foregoing transcript omitted in printing.

---

[fol. 41] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MINUTE ENTRY, CAUSES ARGUED AND SUBMITTED—May 11, 1937

Before Hicks, Allen and Martin, JJ.

These causes are argued by Arthur H. Ratner, Donald Frederick and George S. Fitzgerald for Appellants, and by Fred Walker and Louis Hopping for Appellee and are submitted to the Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—No. 7383—Filed June 3, 1937

Appeal from the District Court of the United States for the Eastern District of Michigan

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

---

[fol. 42] IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—No. 7384—Filed June 3, 1937

Appeal from the District Court of the United States for the Eastern District of Michigan

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

---

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—No. 7385—Filed June 3, 1937

Appeal from the District Court of the United States for the Eastern District of Michigan

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS

OPINION—Nos. 7383-4-5—Filed June 3, 1937

Before Hicks and Allen, Circuit Judges, and Martin, District Judge

ALLEN, Circuit Judge:

Appellants were jointly indicted with others, in a single indictment which contained four counts, for conspiring (1) unlawfully to possess certain unregistered apparatus for the production of distilled spirits; (2) unlawfully to make and ferment mash in an unregistered distillery; (3) unlawfully to carry on the business of distillers without giving bond as required by statute, and (4) unlawfully to possess distilled spirits in unstamped containers. The substance of the four counts is set forth more fully in the margin.[1]

[1] Count 1 of the indictment charged that appellants and others from October 1, 1934, to and including the time of the filing of the indictment, unlawfully conspired together to possess and cause to be possessed, certain stills and distilling apparatus for the production of distilled spirits, and to cause the same to be set up without having the same registered with the Collector of Internal Revenue, as required by law. The second count charged that between October 1, 1934, and the date of the filing of the indictment, appellants unlawfully conspired together to make and ferment, and cause to be made and fermented, large quantities of mash in a building and on premises not duly authorized and designated according to law as a distillery. Count 3 charged that appellants, between October 1, 1934, and the date of the filing of the indictment, unlawfully conspired together to carry on the business of distillers without having given bond, as required by law, and with the intent on their part to defraud the United States Government of the tax on the spirits to be distilled. Count 4 charged that between October 1, 1934, and the date of the filing of the indictment, appellants unlawfully conspired together to possess a large quantity of distilled spirits, namely, 775 gallons, at 5620 Federal Street, Detroit, Michigan, and 1,500 gallons at 4029 Milford Street, Detroit, Michigan, the immediate containers thereof not having affixed thereto the stamp or stamps denoting the quantity of distilled spirits contained therein, and evidencing payment of all internal revenue taxes imposed on such spirits.

All appellants were convicted and separate fines and separate sentences of imprisonment were imposed under each of the four counts upon each of the appellants, the sentences being cumulative. The appeals present the single question, whether the sentences thus imposed constitute double punishment, and hence violate the Fifth Amendment to the Constitution of the United States.

Appellants contend that but one continuing conspiracy existed and that the counts charge one crime only, for which there can be but one punishment.

[fol. 44] We think that the judgments must be affirmed because each count charges a separate statutory offense.

While the acts of unlawfully setting up a still, unlawfully manufacturing mash, unlawfully dealing in distilled liquors, and unlawfully possessing such liquors, are often interrelated, the Congress has specifically provided that these acts shall constitute different offenses (Title 26, Sections 1152a, 1162, 1184, 1185, U. S. C.), and there is nothing in the Constitution which prevents the Congress from punishing separately each step leading to the consummation of the transaction which it has power to prohibit, and punishing also the completed transaction. Albrecht v. United States, 273 U. S. 1, 11.

The four counts are identical as to time, but the period covered is over twelve months, and different overt acts are set forth in support of each count of the indictment. The appeal is prosecuted under Rule 8 of the Rules of Practice and Procedure in criminal cases brought in the District Courts, promulgated May 7, 1934, and the record therefore contains no bill of exceptions. Unless the indictment upon its face shows that there was but one offense, since appellants were found guilty upon all four counts, we assume that testimony was offered showing the existence of four separate conspiracies. While many of the same facts may have been relied on to support the verdict on each count, this circumstance does not establish appellants' contention. As a matter of law each of the offenses charged was separate and distinct. Cf. Burton v. United States, 202 U. S. 344.

A single act may be an offense against two statutes, and if each statute requires proof of some fact which the other does not, an acquittal or conviction upon either statute does not exempt the accused from prosecution and punishment

under the other. Blockburger v. United States, 284 U. S. 299, 304. In that case the question was whether the same act, namely, a sale of narcotics, constituted two offenses: (1) that of selling the forbidden drugs except in or from the original stamped package, and (2) that of selling any such drugs not in pursuance of a written order of the person to whom the sale was made. It was held that although there was but one sale, two offenses were committed, and that the test to be applied to determine whether there are [fol. 45] two offenses or only one is whether conviction for each offense requires proof of a fact which the other does not. Here totally separate and distinct acts are charged. The same proof would not necessarily establish these separate charges. A conspiracy to set up an unregistered still could be proved without presentation of evidence of the conspiracy to manufacture mash, and vice versa. This is true as to a conspiracy to operate a still without giving bond, and unlawfully to possess unstamped containers of liquor. Certain entirely distinct elements are required to establish the conspiracy described in each count, and hence four distinct offenses are charged. Yenkichi Ito v. United States, 64 Fed. (2d) 73, 77 (C. C. A. 9); Parmenter v. United States, 2 Fed. (2d) 945 (C. C. A. 6); King v. United States, 31 Fed. (2d) 17 (C. C. A. 9); Leonard v. United States, 18 Fed. (2d) 208, 213 (C. C. A. 6); Pollock v. United States, 35 Fed. (2d) 174, 175 (C. C. A. 4); Piquett v. United States, 81 Fed. (2d) 75, 79 (C. C. A. 7); Slade v. United States, 85 Fed. (2d) 786 (C. C. A. 10); Chrysler v. Zerbst, 81 Fed. (2d) 975 (C. C. A. 10); United States v. Wexler, 79 Fed. (2d) 526, 528 (C. C. A. 2). It is significant that different overt acts were charged under each of the four counts of the indictment. Cf. Piquett v. United States, supra. The District Court did not err in imposing separate fines and requiring that the sentences upon all four counts run consecutively. The offenses were separate, and no double punishment exists.

The judgments are affirmed.

---

[fol. 46] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 202

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the question whether the first count of the indictment states an offense under federal law.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

---

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 203

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the question whether the first count of the indictment states an offense under federal law.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

[fol. 49] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 204

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the question whether the first count of the indictment states an offense under federal law.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

---

Endorsed on cover: Enter Isidore G. Stone. File Nos. 41, 683, 41, 684, 41, 685. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 202. Harry Fleisher, petitioner, vs. The United States of America. Term No. 203. Sam Fleisher, petitioner, vs. The United States of America. Term No. 204. Joseph Stein, petitioner, vs. The United States of America. Petition for writs of certiorari and exhibit thereto. Filed July 8, 1937. Term Nos. 202, O. T., 1937, 203, O. T., 1937, 204, O. T., 1937.